



**A REGULAR MEETING MINUTES
PLANNING AND ZONING BOARD
JANUARY 5, 2015**

1. CALL TO ORDER / PLEDGE OF ALLEGIANCE / INVOCATION

Chairman Eric Weiss called the meeting of the City of Winter Garden Planning and Zoning Board to order at 6:32 p.m. in the City Hall Commission Chambers. A moment of silence was followed by the Pledge of Allegiance.

2. ROLL CALL AND DETERMINATION OF QUORUM

The roll was called and a quorum was declared present.

MEMBERS PRESENT:

Chairman Eric Weiss, Vice-Chairman Will Hawthorne, and Board Members: Mark DeFuso, Heather Gantt, David Kassander, and Mark Maciel

MEMBERS ABSENT:

Gerald Jowers (excused)

STAFF PRESENT:

City Attorney Kurt Ardaman, Community Development Director Ed Williams, Community Development Manager Steve Pash, Planner II Kelly Carson, Planner I Nadine Avola, and Customer Service Rep. Kathleen Rathel

3. APPROVAL OF MINUTES

Motion by David Kassander to approve the regular meeting minutes of December 1, 2014 and seconded by Mark DeFuso. Motion carried unanimously 6 - 0.

PRESENTATION

City Attorney Kurt Ardaman made a presentation on the requirements that apply to appointed Public Officials. Mr. Ardaman discussed the Sunshine Law and other Board Member responsibilities to the new and existing Board Members. The presentation lasted approximately 30 minutes. (*Attached Exhibit 'A'*).

ANNEXATION / FUTURE LAND USE MAP AMENDMENT / REZONING (PUBLIC HEARING)

4. 933 Carter Road – Duston Properties II, LLC (ANNEXATION/FLU/ZONING)

Community Development Manager Pash presented a voluntary request for Annexation, Zoning, and Future Land Use designation for the property located at 933 Carter Road. The subject property makes up a 0.907 +/- acre enclave located on the east side of Carter Road, south of East Story Road and north of West Colonial Drive. The applicant has requested Annexation into the City, initial Zoning of I-2, and Amendment to the Future Land Use Map

of the City's Comprehensive Plan to designate the property as Multi Office Industrial. Staff recommends approval of Ordinances 15-13, 15-14 and 15-15.

Motion by Will Hawthorne to recommend approval of Ordinances 15-13, 15-14 and 15-15 [933 Carter Road] with Staff Recommendations (as provided in the agenda packet) and seconded by Heather Gantt. Motion carried unanimously 6 - 0.

5. 120 E Maple Street – Jude Meus (ZONING)

Community Development Manager Pash presented a request for Rezoning for the property located at 120 E Maple Street. The subject property consists of a 0.16 +/- acre lot located at the southwest corner of East Maple Street and Charles Street. Staff discovered a scrivener's error while reviewing plans for this property and we are processing this rezoning from R-2 to C-3 to make the zoning consistent with the existing FLU designation and use of the property. Staff recommends approval of Ordinance 15-17 subject to the conditions listed in the Staff Report.

Motion by Mark DeFuso to recommend approval of Ordinance 15-17 [120 E Maple Street] with Staff Recommendations (as provided in the agenda packet) and seconded by David Kassander. Motion carried unanimously 6 - 0.

6. 360 W Plant Street – Blue House Development, LLC (ZONING)

Community Development Manager Pash presented a request for Rezoning for the property located at 360 W Plant Street. The subject property consists of a 0.49 +/- acre lot located just west of City Hall. The property was recently purchased by a developer with plans to demolish the existing house and construct an 18,000 square foot retail and office building. The lot is located in the Historic District and an application has been submitted to the Architectural Review and Historic Preservation Board (ARHPB) requesting the demolition and approval of the new construction. The proposed rezoning from R-NC to C-1 and the proposed development is consistent with the surrounding area. Staff recommends approval of Ordinance 15-18.

Board Member Weiss asked if it was normal for Traditional Downtown to get approval from the ARHPB first. Mr. Pash replied that it was not necessary for rezoning but it would be required before the project goes through Site Plan review.

Motion by David Kassander to recommend approval of Ordinance 15-18 for 360 W Plant Street with Staff Recommendations (as provided in the agenda packet) and seconded by Mark Maciel. Motion carried unanimously 6 - 0.

PRELIMINARY PLAT (PUBLIC HEARING)

7. Lake Brim Drive – Oakland Park Phase 4

Planner II Carson presented a request for a Preliminary Plat Oakland Park Phase 4 which consists of 158 single-family lots on 66.1 +/- acres. This Phase will also include development of several recreational areas. The proposed Preliminary Plat is consistent with the City's Comprehensive Plan, the City of Winter Garden Code of Ordinances, and the Planned Unit Development Zoning. Staff recommends approval subject to the conditions listed in the Staff Report.

John Classe with Crescent Communities was present to answer questions. A discussion ensued regarding roadwork in other phases as well as connection to Tildenville School Road and the western boundary being located at the city limit of the town of Oakland.

Motion by David Kassander to recommend approval of the Preliminary Plat for Lake Brim Road with Staff Recommendations (as provided in the agenda packet) and seconded by Will Hawthorne. Motion carried unanimously 6 - 0.

8. 17001 Marsh Road – Waterside on Johns Lake Phase 2

Planner II Carson presented a request for a Preliminary Plat for Waterside on Johns Lake Phase 2 which consists of 289 single-family units and 17 live/work units on 105.23 +/- acres. The subject property is located on the north and south sides of Marsh Road directly to the west of Waterside on Johns Lake Phase 1. This phase will be constructed in three sub-phases: Phase 2-A will consist of 103 single-family units, Phase 2-B will consist of 52 single-family units, and Phase 2-C will consist of 134 single-family units along with the 17 live/work units. The project will also include construction of a round-a-bout on Marsh Road and improvements on N Williams Road. The proposed Preliminary Plat is consistent with the City's Comprehensive Plan, the City of Winter Garden Code of Ordinances, and the Urban Village Planned Unit Development Zoning. Staff recommends approval subject to the conditions listed in the Staff Report and the DRC memo.

Board Member Weiss asked about setbacks from Lake Avalon and other sensitive environmental features adjacent to the subject property. Ms. Carson replied there is a significant Karst feature that is being avoided with large setbacks.

Motion by Heather Gantt to recommend approval of the Preliminary Plat for 17001 Marsh Road with Staff Recommendations (as provided in the agenda packet) and seconded by Mark Maciel. Motion carried unanimously 6 - 0.

9. 562 Beard Road – Beard Road Subdivision

Community Development Manager Pash presented a request for a Preliminary Plat for the Beard Road Subdivision which consists of 77 single-family lots. The proposed Preliminary Plat is consistent with the City's Comprehensive Plan, the City of Winter Garden Code of Ordinances, and the Planned Unit Development Zoning. Staff recommends approval subject to the conditions listed in the Staff Report.

Board Member Weiss asked about Orange County Public Schools in the past wanting the Planning & Zoning Board to deny large developments as no new schools were being built. Mr. Pash stated that this particular subdivision had been given approval by Orange County Public Schools as there is currently enough capacity. A discussion ensued regarding the approval process from the School System.

Motion by Mark Maciel to recommend approval of the Preliminary Plat for 562 Beard Road with Staff Recommendations (as provided in the agenda packet) and seconded by Mark DeFuso. Motion carried unanimously 6 - 0.

SPECIAL EXCEPTION (PUBLIC HEARING)

10. 16100 Marsh Road – Corner Market Orlando, Inc.

Community Development Manager Pash presented a request for a Special Exception to allow for the development of a convenience store at 16100 Marsh Road, Suite 203. The property is

generally located at the southwest corner of Marsh Road and Avalon Road. The property is zoned PCD and the Ordinance only allows convenience stores through a Special Exception. The store is proposed to be 1400 square foot and sell general household items – no lottery tickets, alcohol, or tobacco products. Staff recommends approval subject to the conditions listed in the Staff Report.

It was clarified that there would be no fuel sales and there was sufficient parking.

Motion by Mark DeFuso to recommend approval of the Special Exception for 16100 Marsh Road with Staff Recommendations (as provided in the agenda packet) and seconded by Will Hawthorne. Motion carried unanimously 6 - 0.

VARIANCE

11. 224 S Boyd Street – Tory Parish

Planner II Carson presented a request for a Variance for the property located at 224 S Boyd Street. The property is .2 +/- acre with a zoning of R-2. The applicant is requesting permission to construct a new two-story single-family residence and double front porch with a 22' front yard setback in lieu of the minimum required 30' front yard setback in order to avoid construction within the drip line of an existing mature live oak tree. Staff recommends approval of the Variance.

A discussion ensued regarding the proposed location of the new construction in relation to the tree. It was also verified that the porch only would encroach into the front yard setback.

Tory Parish of 12524 Aldershot Lane, Windermere FL was present to answer questions and clarified that the only reason for the variance was to save the existing mature live oak tree.

Motion by David Kassander to recommend approval of the Variance for 224 S Boyd Street with Staff Recommendations (as provided in the agenda packet) and seconded by Eric Weiss. Motion carried unanimously 6 - 0.

12. ADJOURNMENT

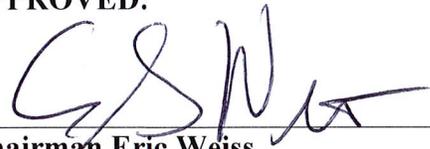
There being no further business, the meeting was adjourned at 7:33 pm.

ATTEST:



Customer Service Rep. Kathleen Rathel

APPROVED:



Chairman Eric Weiss

City of Winter Garden Planning and Zoning Board Workshop

January 5, 2015
Presented by Fishback Dominick

Topics

- Powers and Duties
- Quasi-judicial decisions
- Ex-parte communications
- Citation of legal authority upon denial
- Decision standards for approvals
- Sunshine Law
- Voting conflicts

Planning and Zoning Board

- Consist of seven members appointed by the City Commission.
- Absence from three (3) regular meetings of the board within a one year period shall operate to vacate the seat of a member, unless the absences are excused by the board.
- Four members of the board present at a meeting constitutes a quorum for transacting business.
- The board elects its chairperson for terms of one year.

Powers and Duties

- Recommendations to City Commission
 - Comprehensive Plan Amendments
 - Rezoning
 - Subdivisions – preliminary plats & lot splits
- Grant Special Exceptions
- Grant Variances
- Serve as City's Land Planning Agency

Quasi-judicial decisions

- A quasi-judicial action applies an existing rule or policy to a small number of people or a particular piece of property.
- Most actions taken by the board are quasi-judicial in nature, including:
 - Most rezonings
 - Variances
 - Special Exceptions
 - Preliminary Plats and Plats

Quasi-judicial proceedings

- In a quasi-judicial proceeding, certain elements of due process must be afforded the applicants and participants, such as:
 - Reasonable notice of a hearing
 - Right to be heard and submit evidence at the hearing
 - Recommendations and decisions of board must be based on competent substantial evidence in the record.
- Due process must be afforded to all participants. Conduct of proceedings must be in accordance with established rules and principles such that interested parties may meaningfully participate in the process
- Refrain from taking a position for or against an application that involves a quasi-judicial decision until after hearing all the evidence presented at the public hearing. Avoid making statements in advance of Board deliberations that would subject you or the Board to scrutiny for having your mind made up or being prejudicially biased for or against an application and/or interested party/person.

Competent Substantial Evidence

- Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred.
- For the “substantial” evidence to also constitute “competent” evidence, the evidence relied upon should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support for the conclusion reached.
- Some of the items that can be relied upon as competent substantial evidence are:
 - City staff reports and testimony
 - Fact based applicant and citizen testimony
 - Comprehensive plan and zoning maps and ordinances
 - Expert testimony and reports.

Ex parte Communications

- Communications with persons or parties to quasi-judicial proceedings outside of the public hearing, may constitute a presumptive prejudice of the other party's due process rights and be a basis for challenging the Board's decision.
- Parties to a quasi-judicial proceeding include the applicant, persons speaking for or against the application, and city staff.
- Site visits and independent investigations for quasi-judicial matters are discouraged. Although section 286.0115, Florida Statutes, allows such investigations and site visits and the receipt of opinions regarding quasi-judicial actions, logistical and due process issues that may arise are good reason to avoid making such independent inquiries. Again, the best course of action to avoid scrutiny and potential challenges is to avoid making your own site visits, inspections, or receipt of expert opinions, and to utilize information made available at the various hearings on the particular issue. If, however, a site visit, inspection, or receipt of expert opinions does occur, then disclosure should be made early in the hearing and made part of the record before final action on the matter in order to give those with contrary positions or evidence an opportunity to respond to such.
- Pursuant to section 286.0115(1), Florida Statutes and City Ordinance, if ex parte communications are sent or received by a Board member, it is necessary for the member to disclose during the public hearing and before final action the subject of the ex parte communications and the identity of the person, group, or entity with whom the communications took place.

Decision Based on Criteria

- Quasi-judicial decisions should be based on the applicable criteria for the approval or matter being sought.
- For example, each type of development application has a set of criteria set forth in the City's Code. The application must meet the applicable criteria to be approved.
- The Board's duty is to determine whether based on competent, substantial evidence in the record made at the hearing, the application meets or fails to meet the criteria. If the criteria is met, the application is to be approved.

Special Exception Criteria

Sec. 118-97 through 118-102

- Any special exception use shall be permitted as specified in individual zoning district regulations, when such use is compatible to surrounding uses, will not create traffic hazards or parking problems, does not deviate from the terms of this chapter.
- All special exceptions shall be subject to site plan review by the Board. This procedure requires submission of a development plan which sets forth specific land use, circulation and access, building arrangement and overall site layout.
- The Board shall especially consider the effect of the special exception use on surrounding uses in determining whether a special exception use shall be approved, modified or disapproved.
- The Board may require conditions such as performance standards, screening or landscaping as well as time limitations or other similar requirements.

Variance Criteria

Sec. 118-126 through 118-135

- A variance may be granted from land development regulations if the Board concludes that:
 - literal enforcement of the provisions of land development regulations would result in either practical difficulties (for setback and parking provisions); or
 - unnecessary hardships (for all other land development regulations) for the property at issue.
- "Practical difficulty" means use of all or a portion of the property at issue cannot occur with reasonable physical accommodation that is economically reasonable.
- "Unnecessary hardship" means a practical difficulty which exists due to an unintended effect of the land development regulation.

Variance Criteria

Sec. 118-126 through 118-135

- In order for a variance to be granted, the Board must also find that, by granting the variance, the remaining regulations will protect the public safety and welfare of the city. The Board may reach these conclusions if it finds that:
 - (1) Granting the variance will not cause or allow interference with the reasonable enjoyment of adjacent or nearby property owners or negatively impact the standard of living of the citizens of the city;
 - (2) The variance will allow a reasonable use of the property, which use is not out of character with other properties in the same zoning category;
 - (3) In the context presented, strict compliance with the land development regulation will not further any legitimate city objective or the benefits that would be achieved under the other variance criteria by the granting of the variance outweigh the benefits under this criteria if the variance were denied;
 - (4) The granting of the variance is consistent with the city's comprehensive plan; and
 - (5) The variance requested is the minimum variance that will make reasonable use of the land, building, or structure or the benefits that would be achieved under the other variance criteria by the granting of the variance outweigh the benefits under this criteria if the variance were denied.

Subdivisions – Preliminary Plats & Lot Splits Chapter 110, Winter Garden Code

- Lot Splits and Preliminary Plats are reviewed to determine if they meet technical code requirements.
- If code requirements are met, Board shall recommend approval of the pending application for lot split or preliminary plat.
- Issues of compatibility with surrounding uses are not relevant to subdivision approval.

Rezoning

- The Board may recommend approval of a rezoning to the City Commission if after competent, substantial evidence has been presented that allows the Board to make the following findings:
- (1) The request is consistent with the comprehensive plan and the future land use map;
- (2) The proposed rezoning will not substantially devalue or prevent reasonable use and enjoyment of the adjacent properties;
- (3) Adequate facilities are available or a development agreement has been established that will provide these improvements in a reasonable time frame;
- (4) The proposed rezoning will not allow a type or intensity of development that is premature or presently out of character in relationship to the surrounding area;
- (5) The rezoning will not interfere with an adjacent property owner's reasonable expectation of use or enjoyment; and
- (6) There is available adequate streets and thoroughfares to support traffic to be generated by development of the property to be rezoned.

Denial of Development Permits

- Section 166.033, Florida Statutes states that when a municipality denies an application for a development permit, the municipality shall give written notice to the applicant and the notice must include a citation to authority for denial of the permit.
- If the Board denies a development permit application, written notice of the denial must be given to the applicant and must contain the legal basis for such denial.
- Therefore, in order to assist the City staff in their preparation of the required notice, the Board member making the motion for denial of a development permit application should announce all of the code provisions/criterion with which the application does not comply.

Sunshine Law

Section 286.011, Florida Statutes

- Planning & Zoning Board members are subject to the Government in the Sunshine Law.
- The law has been applied to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action. There is no requirement for a quorum to be present for a meeting to be subject to Sunshine Law.
- There are three basis requirements of Sec. 286.011, Fla. Stat.:
 - Meetings of Board must be open to the public;
 - Reasonable notice of such meetings must be given; and
 - Minutes of the meetings must be taken.

Sunshine Law

- Correspondence between Members of the same board to discuss with, solicit opinions and comments from, or inform other Members of a subject which will be discussed at a public hearing is a violation of the Sunshine Law.
- Meeting with another Board member includes communications by:
 - In person meetings
 - E-mail, internet blogs, facsimiles, mail, passing notes/letters
 - Telephone
 - Use of non-board member liaisons between members

Sunshine Law

Penalties for Violations

- Any Member who *knowingly* violates the Sunshine Law is guilty of a misdemeanor of the second degree, which is punishable by imprisonment up to 60 days and/or a fine of \$500.00.
- Suspension upon indictment and removal from office upon conviction.
- Non-criminal penalties for violations are punishable by a fine up to \$500.00 and reasonable attorney's fees assessed against the violating member.
- The action taken in violation of the Sunshine Law may be void.

Voting Conflicts

- Section 286.012, Florida Statutes, provides that no Member of the Board who is present at any Board meeting at which a official decision, ruling, or other official act is to be taken or adopted may abstain from voting, except when, with respect to any such Member, there is, or appears to be, a possible conflict of interest prescribed in Chapter 112, Florida Statutes

Voting Conflicts

Chapter 112, Florida Statutes

- No Board member shall vote upon any matter which:
 - would inure to the member's special private gain or loss;
 - the member knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained;
 - He or she knows would inure to the special private gain or loss or a relative or business associate of the member.

Voting Conflicts

Chapter 112, Florida Statutes

- A Member with a voting conflict shall:
 - Abstain from voting on the conflicting matter.
 - Prior to the vote being taken, publicly state to the assembly the nature of the Member's interest in the matter from which he or she is abstaining from voting.
 - Within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person recording the Board minutes.

END